

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 59835-0-1
)	
Respondent,)	
)	
v.)	
)	
RODNEY LEWIS GARROTT,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 27, 2009
)	

Ellington, J. — Rodney Garrott appeals the restitution order imposed as part of his sentence for residential burglary, arguing he was denied the constitutional and rule-based right to be present at the restitution hearing. Because Garrott had waived any objections to the restitution amount and a hearing was therefore not necessary, we affirm.

BACKGROUND

Rodney Garrot was charged with one count of residential burglary and one count of trafficking in stolen property in the first degree. The charges arose from events on June 16, 2003, when Garrott broke into Jodi Mangold's Seattle house and took several items of property, one of which he later pawned. Garrott was tried and convicted of both charges. As part of his sentence, he was ordered to pay \$727.90 in restitution. Garrott appealed his convictions and this court reversed and remanded.

On remand, Garrott pled guilty to one count of residential burglary. The plea documents memorialized Garrott's understanding that the prosecutor would recommend restitution be ordered.¹

At sentencing, Garrott was asked whether he waived his presence at a future restitution hearing. Garrott responded, "I'd like to be here."² The judgment and sentence confirmed that "[d]efendant wishes to be present at restitution hearing."³ Several days afterward, the State presented Garrott's attorney with a proposed order setting restitution at \$727.90. Garrott's attorney signed it, noting "Copy received; Notice [of] Presentation waived."⁴ The court signed the order without a hearing and outside Garrott's presence.

Garrott later moved to terminate his legal financial obligation on grounds of indigence. After the court explained that it had waived most obligations except for the mandatory victim penalty and \$727.90 in restitution, Garrott withdrew his motion.

Garrott appeals the restitution order only.

ANALYSIS

Garrott argues the restitution order was entered in violation of his constitutional and rule-based right to be present at sentencing. He did not raise this argument below. As a general rule, we do not consider issues raised for the first time on appeal.⁵ However, a defendant can raise for the first time on appeal alleged manifest errors

¹ Garrott later moved to withdraw his plea, but his motion was denied.

² Report of Proceedings (RP) (Feb. 3, 2006) at 38.

³ Clerk's Papers at 59.

⁴ Clerk's Papers at 65.

⁵ RAP 2.5(a); State v. Tolias, 135 Wn.2d 133, 140, 954 P.2d 907 (1998).

affecting constitutional rights.⁶

Assuming a defendant has a constitutional right to be present at a restitution hearing, Garrott waived any challenge based on such a right.

Before the court, and also in his plea papers, Garrott acknowledged and agreed that restitution would be imposed; only the amount of restitution remained at issue. Restitution must be accurately determined either by a defendant's admission or acknowledgement, or by a preponderance of the evidence at an evidentiary hearing.⁷ It is undisputed that Garrott did not admit or acknowledge the restitution amount,⁸ and that a restitution hearing never occurred.

Garrot, however, did move the court to have his legal financial obligations remitted on grounds of indigence. At a hearing on another matter, the court took the opportunity to explain to Garrott that, in view of his indigence, it had waived all nonmandatory legal financial obligations and imposed only the nonwaivable victim penalty assessment and restitution. As to restitution, the court stated, "At the sentencing hearing the parties agreed to restitution under the '03 cause number in the amount of \$727.90."⁹ Garrott did not take issue with this statement. The court also explained to Garrott that a hearing on his motion was not required by law, but that it "wanted to address it now in case he had any questions of the court."¹⁰ Garrott stated

⁶ RAP 2.5(a)(3); Tolias, 135 Wn.2d at 140.

⁷ State v. Ryan, 78 Wn. App. 758, 761–62, 899 P.2d 825 (1995).

⁸ Although Garrott's attorney signed the proposed restitution order, he did so only as to copy received and notice of presentation waived. The order does not recite any agreement or stipulation. The restitution order was therefore not an agreed or stipulated order. See State v. Moen, 129 Wn.2d 535, 540–41, 919 P.2d 69 (1996).

⁹ RP (Nov. 16, 2007) at 14–15.

he did not have any questions for the court and declared himself “satisfied”¹¹ with the court’s explanation. He then withdrew his motion.

The record shows that Garrott, despite several opportunities to object to the imposition of \$727.90 in restitution, chose not to raise such objections. He thus implicitly waived the objections to the restitution amount. Because a hearing is not required when the restitution amount is not at issue, Garrott cannot complain about his right to be present at a hearing that never occurred.

Affirmed.

Edington, J

WE CONCUR:

Grosche, J

Leach, J.

¹⁰ Id. at 18.

¹¹ Id.